

APR 27 2005

PTO/SB/26 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TERMINAL DISCLAIMER TO OBLIGATE A DOUBLE PATENTING
REJECTION OVER A "PRIOR" PATENTDocket Number (Optional)
A02P1013US01In re Application of: **Mark W. Kroll**Application No.: **10/071,282**Filed: **02/07/2002**For: **SYSTEM AND METHOD FOR EVALUATING RISK OF MORTALITY DUE TO
CONGESTIVE HEART FAILURE USING PHYSIOLOGIC SENSORS**

The owner*, **PACESSETTER, INC.**, of **100** percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. ***6,645,153*** as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

claims 1-9

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later

expires for failure to pay a maintenance fee;

is held unenforceable;

is found invalid by a court of competent jurisdiction;

is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;

has all claims canceled by a reexamination certificate;

is reissued; or

is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. The undersigned is an attorney or agent of record. Reg. No. **43,179**

Ronald S. Tamura

Signature

4/29/05

Date

Ronald S. Tamura, Attorney for Applicant(s)

Typed or printed name

818/493-3157

Telephone Number

Terminal disclaimer fee under 37 CFR 1.20(d) included.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

05/04/2005 MBIZUNES 00000001 160068 10071282 For assistance in completing the form, call 1-800-PTO-2123 and select option 2.

01 FC:1814 130.00 DA